IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petitions No.3085 and 3086 of 2000

Chamundeeswari — Petitioner in W.P.No.3085 of 2000
P.R.Sridharan — Petitioner in W.P.No.3086 of 2000

vs.

The Commercial Tax Officer,
Vellore Rural, Vellore. — Respondent in both the W.Ps.

Writ petitions filed under Article 226 of the Constitution of India for the issue of writ of certiorari calling for the records relating to the proceedings of the respondent dated 24.11.1999 in Rc.A3/4925/97 issued under sections 25 and 8 of the Tamilnadu Revenue Recovery Act and quash the same.

For Petitioner : Ms.G.Sumithra for Mr.P.Anantha Krishnan Nair
For Respondent : Mr.A.Shanmugasundaram,
Government Advocate

ORDER

The petitioners have put in issue the distraint proceedings initiated by the respondent, the Commercial Tax Officer to recover a sum of Rs.31,03,345/- towards arrears of sales tax for the assessment years from 1991-92 to 1994-95. It is the case of the petitioners that the assessee is the public limited company incorporated under the Companies Act 1956 under the certificate No.12819 of 1986 amended on 13.11.1987. The company and its factory have been taken possession by the Tamilnadu Industrial Investment Corporation under Section 29 of the State Financial Corporation Act, 1995 and the company is no more in existence. Further, the petitioners have also resigned from the directorship on and from 18.06.1996 and 23.05.1996 respectively and to that effect resolution has been passed by the directors of the company. As such from that dates the petitioners ceased to be the directors of the company. All of a sudden, proceedings under section 8 of the Revenue Recovery Act has been issued against the petitioners. There is absolutely no provision whatsoever in the Tamil Nadu General Sales Tax Act to recover the tax due in respect of a company from its directors, as it is well recognised that a company is a separate legal entity by itself and if any recovery has to be made from the company, that has to be done against the properties of the company and not against the properties of

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its directors. On this ground, the writ petition has been filed challenging the distraint proceedings.

2. Mr.Shanmugasundaram, learned counsel for the Government argued for sustaining the orders by submitting that the company can be treated as Association of Persons and as such and under section 19A of the Tamil Nadu General Sales Tax Act proceedings can be initiated against the persons who asserted themselves as Association of persons.

3. Heard the learned counsel on either side and perused the materials available on record and went through the relevant provisions in the statute.

4. On hearing the counsel on either side, I am afraid, the argument advanced on behalf of the respondent by the learned Government Advocate can be accepted. It is well settled that a company is a legal entity by itself and it can sue or can be sued as a legal entity and any dues from the company has to be recovered only from the company and not from its directors. Section 19A of the Act cannot be taken assistance by the respondent for sustaining the order, which provides for the liability to tax of partitioned Hindu family, dissolved firm. Even section 19B of the Act, which provides for liability to tax private company on winding up, cannot be invoked.

5. In this regard, useful reference can be had to the decisions of various High Courts, which are as follows :

In the case of Desiraju Venkatakrishna Sarma, In re, (1955) XXV Company Cases 32, Andhra Pradesh High Court has, in similar circumstance, held that a company is a body corporate and can be made liable for payment of taxes in respect of taxes payable by it. There is no personal obligation on the shareholders on the directors of a limited company in respect of the debts, or the taxes, revenue, etc., due from the company. The Managing Director or other directors of a limited liability company cannot be proceeded against as regards recovery of arrears of sales tax payable by the company.

In the case of Lalita Shivaram Ubhaykar v. CTO, XII Circle, Bangalore, (1975) 35 STC 267, in which the company committed default in payments of sales tax due from it and the authorities proceeded against the petitioner who was its director, for recovery of the sales tax dues, the High Court of Karnataka has held that there is no provision in the statute which authorises recovery of arrears due from a company by proceedings against its director.

In the case of Ramachandran v. State of Kerala, ((1984) 55 STC 209), the High Court of Kerala held that there is no provision of law which enables the revenue to proceed against a Director of a company, personally for the arrears of sales tax due from the company, which is a distinct and different legal entity, but if it is shown or substantiated that the director has got the properties of the company, the revenue would not be prevented from proceeding against him.

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In the case of Punalur Paper Mills Ltd v. District Collector, Quilon, ((1985) 60 STC 193), the Kerala High Court held that in the absence of a specific provision in the Kerala General Sales Tax Act, fastening liability on the director or the Managing Director of a company for the tax due by the company, no proceedings can be initiated against the Director of the Managing Director for recovery of such dues.

In Nishad Patel v. State of Kerala ((1999) 113 STC 395), the High Court of Kerala held that a company is a legal entity distinct from its shareholders as well as its directors, and as such no proceedings can be taken against the Directors of a company for recovery of any amounts whatsoever due from the company. The directors cannot be made personally liable to pay arrears of sales tax due from the company under the Kerala General Sales Tax Act, 1963.

In Subash Chandra Kankaria v. State of Rajasthan ((1999) 114 STC 413, the Jodhpur Bench of Rajasthan Taxation Tribunal held the provisions of Section 9D of the Rajasthan Sales Tax Act, 1954 cannot be invoked against a Director of a public company for effecting the recovery of the amount of tax, interest and penalty outstanding against the company.

6. For the reasons stated in the foregoing paragraphs and in the light of the decisions referred to above and in the absence of any statutory provision, I am of the view that the impugned order is liable to be set aside and it is accordingly set aside. The writ petitions are allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

mf

To

The Commercial Tax Officer,
Vellore Rural, Vellore.

2 cc To The Special Government Pleader (Taxes), SR.993, 1046,
2 cc To Mr.P.Ananthakrishnan Nair, Advocate, SR.978,1327.

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MRD(CO)
RVL 19.01.2007

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